

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA
7

8 * * *

9 JOSE MAGDALENO RODRIGUEZ,

Case No. 2:19-cv-00726-GMN-VCF

10 Plaintiff,

SCREENING ORDER

11 v.

12 BRIAN WILLIAMS, et al.,

13 Defendants.

14 Plaintiff, who is in the custody of the Nevada Department of Corrections ("NDOC"),
15 has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and has filed an
16 application to proceed *in forma pauperis*. (ECF No. 1, 1-1). Based on the information
17 regarding Plaintiff's financial status, the Court finds that Plaintiff is not able to pay an initial
18 installment payment toward the full filing fee pursuant to 28 U.S.C. § 1915. Plaintiff will,
19 however, be required to make monthly payments toward the full \$350.00 filing fee when
20 he has funds available. The Court now screens Plaintiff's civil rights complaint pursuant
21 to 28 U.S.C. § 1915A.

22 **I. SCREENING STANDARD**

23 Federal courts must conduct a preliminary screening in any case in which an
24 incarcerated person seeks redress from a governmental entity or officer or employee of
25 a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify
26 any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a
27 claim upon which relief may be granted, or seek monetary relief from a defendant who is
28 immune from such relief. See *id.* § 1915A(b)(1), (2). *Pro se* pleadings, however, must be

1 liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).
2 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:
3 (1) the violation of a right secured by the Constitution or laws of the United States, and
4 (2) that the alleged violation was committed by a person acting under color of state law.
5 See *West v. Atkins*, 487 U.S. 42, 48 (1988).

6 In addition to the screening requirements under § 1915A, pursuant to the Prison
7 Litigation Reform Act ("PLRA"), a federal court must dismiss an incarcerated person's
8 claim if "the allegation of poverty is untrue" or if the action "is frivolous or malicious, fails
9 to state a claim on which relief may be granted, or seeks monetary relief against a
10 defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). Dismissal of a
11 complaint for failure to state a claim upon which relief can be granted is provided for in
12 Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard under
13 § 1915 when reviewing the adequacy of a complaint or an amended complaint. When a
14 court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend
15 the complaint with directions as to curing its deficiencies, unless it is clear from the face
16 of the complaint that the deficiencies could not be cured by amendment. See *Cato v.*
17 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

18 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See
19 *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to
20 state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in
21 support of the claim that would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d
22 756, 759 (9th Cir. 1999). In making this determination, the court takes as true all
23 allegations of material fact stated in the complaint, and the court construes them in the
24 light most favorable to the plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th
25 Cir. 1996). Allegations of a *pro se* complainant are held to less stringent standards than
26 formal pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While
27 the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff
28

1 must provide more than mere labels and conclusions. *Bell Atl. Corp. v. Twombly*, 550
2 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is
3 insufficient. *Id.*

4 Additionally, a reviewing court should “begin by identifying pleadings [allegations]
5 that, because they are no more than mere conclusions, are not entitled to the assumption
6 of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can provide
7 the framework of a complaint, they must be supported with factual allegations.” *Id.* “When
8 there are well-pleaded factual allegations, a court should assume their veracity and then
9 determine whether they plausibly give rise to an entitlement to relief.” *Id.* “Determining
10 whether a complaint states a plausible claim for relief . . . [is] a context-specific task that
11 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

12 Finally, all or part of a complaint filed by an incarcerated person may therefore be
13 dismissed *sua sponte* if that person’s claims lack an arguable basis either in law or in fact.
14 This includes claims based on legal conclusions that are untenable (e.g., claims against
15 defendants who are immune from suit or claims of infringement of a legal interest which
16 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
17 fantastic or delusional scenarios). See *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989);
18 see also *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

19 **II. SCREENING OF COMPLAINT**

20 In the complaint, Plaintiff sues multiple defendants for events that took place while
21 he was incarcerated by the NDOC. (ECF No. 1-1 at 1-2). He sues Brian Williams,
22 Dwayne Deal, James Dzurenda, and Frank Dreesen. (*Id.*) Plaintiff alleges four counts
23 and seeks monetary damages, declaratory relief, and injunctive relief. (*Id.* at 8-10).

24 The complaint alleges the following: Plaintiff has been incarcerated since February
25 of 1999. (*Id.* at 4). For the period from February 1999 to March 2019, Plaintiff should
26 have had 20 credits applied to the minimum terms of his consecutive sentences pursuant
27 to NRS 209.4465 and its amendments. (*Id.* at 3-4). Plaintiff alleges that the Nevada
28

1 Supreme Court's decisions in *Vonseydewitz v. Legrand*, Dkt No. 66159, 2015 WL
2 3936827 (Nev. June 24, 2015) (unpublished) and *Williams v. State Dep't of Corr.*, 402
3 P.3d 1260, 1262 (Nev. 2017) apply to his consecutive sentences that he already has
4 served and that a state district court already found that these cases apply directly to him.
5 (*Id.* at 5).

6 Based on these allegations, Plaintiff alleges four causes of action. Plaintiff alleges
7 that each of the defendants were responsible for the violations at one or more times. (*Id.*
8 at 5).

9 **A. Fourteenth Amendment – Due Process**

10 Plaintiff alleges that Defendants' failure to properly apply good time credits to his
11 minimum terms pursuant to NRS 209.4465, in violation of *Vonseydewitz* and *Williams*,
12 was a violation of his Fourteenth Amendment right to procedural due process and
13 substantive due process. (ECF No. 1-1 at 3-6).

14 In 1999, when Plaintiff alleges that he began serving his sentence, NRS
15 209.4465(7)(b) provided: "Credits earned pursuant to this section . . . Apply to eligibility
16 for parole unless the offender was sentenced pursuant to a statute which specifies a
17 minimum sentence that must be served before a person becomes eligible for parole."
18 NRS 209.4465(7) (emphasis added). In *Vonseydewitz v. Legrand*, Dkt No. 66159, 2015
19 WL 3936827 (Nev. June 24, 2015) (unpublished), the Nevada Supreme Court considered
20 the proper interpretation of the underscored language when addressing the issue of
21 whether Vonseydewitz, a habeas petitioner, was entitled to have his earned statutory
22 credits applied to his parole eligibility date under NRS 209.4465(7)(b). *Id.* The court
23 interpreted the language in NRS § 209.4465(7)(b) more broadly than NDOC officials had
24 and held that NDOC officials had been improperly denying Vonseydewitz the deduction
25 of statutory credits from his minimum sentence because he had committed an offense
26 that required a minimum sentence but that did not explicitly require the offender to serve
27 a minimum period of time before being considered for parole. (*Id.* at **2-3).

1 *Vonseydewitz* was an unpublished order. In 2017, in a published opinion, the
2 Nevada Supreme Court reached the same conclusion regarding the proper interpretation
3 of NRS 209.4465(7)(b) as it had in *Vonseydewitz*. See *Williams v. State Dep't of Corr.*,
4 402 P.3d 1260, 1262 (Nev. 2017).¹

5 Plaintiff alleges that the failure to apply credits to his parole eligibility date in
6 accordance with the Nevada Supreme Court's interpretation of 209.4465(7)(b) violated
7 his right to due process. However, allegations that a defendant violated state law are not
8 sufficient to state a claim for violation of the Fourteenth Amendment's due process clause.
9 *Swarthout v. Cooke*, 562 U.S. 216, 222 (2011). Thus, Plaintiff's allegations that
10 Defendants violated NRS § 209.4465(7) are not sufficient to state a due process claim.

11 In order to state a Fourteenth Amendment procedural due process claim, a plaintiff
12 must adequately allege that he was denied a specified liberty interest and that he was
13 deprived of that liberty interest without the constitutionally required procedures.
14 *Swarthout*, 562 U.S. at 219. Plaintiff must also adequately allege the denial of a liberty
15 interest in order to state a colorable Fourteenth Amendment substantive due process
16 claim. *Brittain v. Hansen*, 451 F.3d 982, 991 (9th Cir. 2006).

17 Nevada state prisoners do not have a liberty interest in the discretionary grant of
18 parole or in eligibility for such parole. See *Moor v. Palmer*, 603 F.3d 658, 661-62 (9th Cir.
19 2010); *Fernandez v. Nevada*, No. 3:06-CV-00628-LRH-RA, 2009 WL 700662, at *10 (D.
20 Nev. Mar. 13, 2009).

21 In some circumstances, state statutory requirements mandating the treatment of
22 good time credits in particular ways will necessarily impact the duration of the prisoner's
23 confinement. An inmate has no due process liberty interest in "good time credits" unless
24 a state law creates such an interest. See *Greenholtz v. Inmates of the Nebraska Penal*
25 *and Correctional Complex*, 442 U.S. 1, 8-11 (1979). In *Sandin v. Conner*, 515 U.S. 472

27 ¹ Neither *Vonseydewitz* nor *Williams* had any effect on the deduction of credits from the maximum term
28 because the limiting language at issue in that case was in NRS 209.4465(7)(b), not 209.4465(7)(a).

1 (1995), the Supreme Court characterized the issue regarding the treatment of good time
2 credits as a liberty interest in a "shortened prison sentence" which resulted from a
3 statutory requirement that good time credits were revocable only if the prisoner was guilty
4 of serious misconduct. *Sandin*, 515 U.S. at 477 (quoting *Wolff*, 418 U.S. at 557). The
5 Supreme Court then went on to hold that, even when a state statute uses mandatory
6 language creating rights under state law, a state can create a liberty interest that invokes
7 procedural protections under the Due Process Clause only if the state's action "will
8 *inevitably* affect the duration of his sentence" or if there are prison conditions that impose
9 "atypical and significant hardship on the inmate in relation to the ordinary incidents of
10 prison life." *Sandin*, 515 U.S. at 484, 487 (emphasis added).

11 Here, the question is whether the alleged failure to apply credits to Plaintiff's parole
12 eligibility dates inevitably affects the duration of Plaintiff's sentences. It does not. This is
13 not a situation where the application of credits would necessarily affect the expiration date
14 of Plaintiff's sentences. Even if Plaintiff were to have good time credits applied to his
15 parole eligibility dates, the maximum terms for his sentences would not change. Plaintiff's
16 claims affect only his parole eligibility dates.² Nevada's parole scheme intentionally and
17 explicitly makes parole discretionary; an offender therefore is not required to be released
18 once he serves the minimum term and is only considered for parole at that time. See
19 *Moor*, 603 F.3d at 661-62. Thus, an earlier parole eligibility date does not inevitably
20 affect the duration of a prisoner's sentence. See *Wilkinson v. Dotson*, 544 U.S. 74, 82
21 (2005) (holding that speeding up *consideration* for parole does not necessarily imply the
22 invalidity of the duration of the prisoner's sentence); *Klein v. Coblenz*, 1997 WL 7675384,
23 *4 (10th Cir. 1995) (relying on *Sandin* to hold that, where good time credits applied under
24 state law only to determining the prisoner's parole eligibility date and not to a sentence
25

26 ² Plaintiff repeatedly alleges that the failure to apply the credits to his minimum terms has led to his
27 confinement. (ECF No. 1-1 at 4, 7, 8). Plaintiff challenges only the calculation of his parole eligibility dates.
28 Any assertion that Plaintiff served excessive time therefore is mere speculation as he could have been
considered for parole and denied parole. Furthermore, if the alleged inaccurate calculation of his parole
eligibility dates did necessarily affect the duration of Plaintiff's confinement, his claims probably would be
barred by *Heck v. Humphrey*, 512 U.S. 477 (1994).

1 reduction, the loss of credits did not inevitably increase the duration of the sentence and
2 there was no liberty interest giving rise to due process protections). Therefore, Plaintiff
3 does not adequately allege a liberty interest and does not and cannot state a procedural
4 due process claim or a substantive due process claim. Accordingly, the Court dismisses
5 the due process claims with prejudice, as amendment would be futile.

6 **B. Eighth Amendment – Cruel and Unusual Punishment**

7 Plaintiff alleges that Defendants' failure to properly apply good time credits to his
8 minimum terms pursuant to NRS 209.4465 in accordance with *Vonseydewitz v. Legrand*,
9 Dkt No. 66159, 2015 WL 3936827 (Nev. June 24, 2015) (unpublished), and *Williams v.*
10 *State Dep't of Corr.*, 402 P.3d 1260, 1262 (Nev. 2017), was cruel and unusual
11 punishment, in violation of the Eighth Amendment. (*Id.* at 8).

12 Because imprisonment is punitive, officials who detain a person may violate that
13 person's rights under the Eighth Amendment if they act with deliberate indifference to the
14 prisoner's *liberty interest*. *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985). For
15 the reasons discussed above, Plaintiff has not adequately alleged a liberty interest and
16 cannot do so. As a result, he cannot state a colorable Eighth Amendment claim.
17 Accordingly, the Court dismisses the Eighth Amendment claims with prejudice, as
18 amendment would be futile.

19 **C. Ex Post Facto Clause**

20 Plaintiff alleges that, in light of the correct interpretation of NRS 209.4465 and the
21 determination by the Nevada Supreme Court in *Williams* that Defendants' interpretation
22 of the statute was incorrect, Defendants have violated the Ex Post Facto Clause in Article
23 I, Section 10 of the United States Constitution by applying the exclusionary criteria in NRS
24 209.4465(8) to deny Plaintiff the application of good time credits to the minimum terms of
25 his sentences. (ECF No. 1-1 at 7).

26 NRS 209.4465(8), which went into effect in July of 2007, imposed exceptions to
27 NRS 209.4465(7)(b) and provided that prisoners convicted of certain types of offenses,
28

1 such as category A and category B felonies, would not have their earned credits deducted
2 from the minimum terms imposed by their sentences. NRS 209.4465(8) (2007).

3 To fall within the *ex post facto* prohibition, a law must be retrospective, which
4 means that it must apply to events occurring before its enactment, and it must
5 disadvantage the offender affected by it. *Lynce v. Mathis*, 519 U.S. 433, 441 (1997).

6 *Williams* did not involve an *ex post facto* issue and did not involve NRS
7 209.4465(8). Rather, as discussed above, *Williams* concerned the incorrect interpretation
8 of the language in NRS 209.4465(7)(b). However, an incorrect application of the law is
9 not sufficient to demonstrate an *ex post facto* violation. In fact, in *Vonseydewitz*, the
10 Nevada Supreme Court found that prison officials had incorrectly interpreted NRS
11 209.4465(7)(b), and it rejected the petitioner's *ex post facto* claim. *Vonseydewitz v.*
12 *Legrand*, No. 66159, 2015 WL 3936827, at *3 (Nev. June 24, 2015). The court explained
13 that the NDOC officials were not applying NRS 209.4465(8) retroactively but rather were
14 misapplying the exception in NRS 209.4465(7)(b). *Id.* Indeed, it would be difficult for an
15 official to simultaneously commit an *ex post facto* claim and to misapply NRS
16 209.4465(7)(b); an official either applied NRS 209.4465(8) retroactively and found that
17 NRS 209.4465(8) precluded the application of NRS 209.4465(7)(b) or it determined that
18 NRS 209.4465(7)(b) was the applicable statutory subsection but misinterpreted and
19 misapplied it. Here, Plaintiff alleges that the state court found that *Williams* and
20 *Vonseydewitz*, which concerned the misinterpretation and misapplication of NRS
21 209.4465(7)(b), apply directly to him. (*Id.* at 5). Such allegations do not and cannot state
22 a colorable *ex post facto* claim. Accordingly, the Court dismisses the *ex post facto* claims
23 with prejudice, as amendment would be futile.

24 **D. State Law Claims**

25 In Count II, Plaintiff alleges that the failure to apply good time credits to his
26 minimum terms resulted in emotional distress and false imprisonment. (ECF No. 1-1 at
27 6-7). The Court construes these allegations as state law claims for intentional infliction
28

1 of emotional distress and false imprisonment. Section 1983 does not provide a cause of
2 action for violations of state law. See *Galen v. County of Los Angeles*, 477 F.3d 652, 662
3 (9th Cir. 2007). The Court therefore does not have original jurisdiction over the state law
4 claims. Although this Court does not have original jurisdiction over state law claims
5 between Nevada residents, under certain limited conditions it may choose to exercise
6 supplemental jurisdiction over a plaintiff's state law claims if the claims are "so related to
7 claims in the action within such original jurisdiction that they form part of the same case
8 or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a).
9 However, because Plaintiff has not stated any colorable claim over which this Court has
10 original jurisdiction, the Court will not exercise supplemental jurisdiction over a state law
11 claim. See 28 U.S.C. § 1367(c)(3) ("The district courts may decline to exercise
12 supplemental jurisdiction over a claim ... if ... the district court has dismissed all claims
13 over which it has original jurisdiction.") The Court therefore dismisses the state law claims
14 without prejudice and without leave to amend.

15 **III. CONCLUSION**

16 For the foregoing reasons, it is therefore ordered that Plaintiff's application to
17 proceed in forma pauperis (ECF No. 1) without having to prepay the full filing fee is
18 GRANTED. The Clerk of Court SHALL FILE the complaint. (ECF No. 1-1). Plaintiff shall
19 not be required to pay an initial installment fee. Nevertheless, the full filing fee shall still
20 be due, pursuant to 28 U.S.C. § 1915, as amended by the Prisoner Litigation Reform Act.
21 The movant herein is permitted to maintain this action to conclusion without the necessity
22 of prepayment of fees or costs or the giving of security therefor.

23 It is further ordered that, pursuant to 28 U.S.C. § 1915, as amended by the Prisoner
24 Litigation Reform Act, the Nevada Department of Corrections shall pay to the Clerk of the
25 United States District Court, District of Nevada, 20% of the preceding month's deposits to
26 the account of Jose Magdalano Rodriguez, # 62375 (in months that the account exceeds
27 \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk shall send a
28

1 copy of this order to the attention of Chief of Inmate Services for the Nevada Department
2 of Prisons, P.O. Box 7011, Carson City, NV 89702.

3 It is further ordered that, even if this action is dismissed, the full filing fee shall still
4 be due, pursuant to 28 U.S.C. §1915, as amended by the Prisoner Litigation Reform Act.

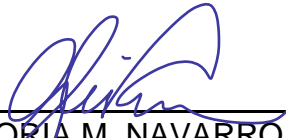
5 It is further ordered that Plaintiff's Fourteenth Amendment procedural and
6 substantive due process claims, Eighth Amendment claims, and *ex post facto* claims are
7 dismissed with prejudice, as amendment would be futile

8 It is further ordered that Plaintiff's state law claims are dismissed without prejudice
9 and without leave to amend as the Court will not exercise supplemental jurisdiction over
10 the state law claims.

11 It is further ordered that this Court certifies that any *in forma pauperis* appeal from
12 this order would **not** be taken "in good faith" pursuant to 28 U.S.C. § 1915(a)(3).

13 It is further ordered that the Clerk of the Court shall enter judgment accordingly
14 and close this case.

15 DATED THIS 13 day of January 2020.

16
17 
18 _____
19 GLORIA M. NAVARRO
20 UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26
27
28